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Attorneys for Plaintiff Donald Sherman

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DONALD SHERMAN,

Plaintiff,

v.

HAROLD WICKHAM, in his personal
 capacity; KIM THOMAS, in his personal
 capacity; WILLIAM GITTERE, in his
 personal capacity and in his official capacity as
 Deputy Director of Operations of the Nevada
 Department of Corrections; BRIAN
 WILLIAMS, in his official capacity as Deputy
 Director of Programs of the Nevada
 Department of Corrections; WILLIAM
 REUBART, in his personal capacity and in his
 official capacity as Warden of Ely State
 Prison; DAVID DRUMMOND, in his official
 capacity as Associate Warden of Ely State
 Prison; and TASHEENA COOKE, in her
 official capacity as Associate Warden of Ely
 State Prison,

Defendants.

Case No. 3:21-cv-00168-ART-CSD

**JOINT STIPULATION TO
 CONTINUE STAY OF SCHEDULING
 ORDER AND DISCOVERY PLAN**

(Third Request)

Hon. Anne R. Traum
 Hon. Craig S. Denney

STIPULATION TO CONTINUE STAY OF
 SCHEDULING ORDER AND DISCOVERY
 PLAN

3:21-CV-00168-ART-CSD

JOINT STIPULATION TO CONTINUE STAY OF CASE MANAGEMENT SCHEDULE

Pursuant to LR IA 6-1 and LR 26-3, counsel for Plaintiff Donald Sherman and counsel for Defendants Harold Wickham, Kim Thomas, William Gittere, Brian Williams, William Reubart, David Drummond, and Tasheena Cooke respectfully submit this joint stipulation to continue the stay of the current case management deadlines stated in the Court's December 2, 2022 Order granting the Parties' Joint Motion to Extend Discovery and Scheduling Deadlines, *see* Dkt. No. 78 (the "Order"), pending the parties' negotiations relating to the specifics of Plaintiff's access to the sweat lodge in compliance with the Court's March 29, 2023 Order Overruling Defendants' Objections to Magistrate Judge Denney's Report and Recommendation, *see* Dkt. No. 80, and in order to permit the parties to explore a global settlement relating to Plaintiff's claims, *see* Dkt. No. 95.

This is the third stipulation to stay the current scheduling Order. The Court previously stayed and extended case management dates on two prior occasions pursuant to the parties' stipulation. *See* Dkt. Nos. 70, 71, 94, 95.

The parties request to continue the stay of the case management schedule to allow them to focus on ongoing negotiations relating to Plaintiff's preliminary injunctive relief in accordance with the Court's May 29, 2023 order, and to continue mediation efforts to explore a global settlement of Plaintiff's claims.

Plaintiff filed a First Amended Complaint on July 18, 2022, adding five new defendants—Gittere, Williams, Reubart, Drummond, and Cooke—in addition to Defendants Wickham and Thomas, who Plaintiff named in the original Complaint. *See* Dkt. No. 57. The newly added Defendants returned waivers of service of the summons on September 23, 2022, and filed an answer to the First Amended Complaint on October 18, 2022. *See* Dkt. Nos. 65–69, 72. Additionally, Sherman filed a Renewed Motion for Preliminary Injunction on June 2, 2022. *See* Dkt. No. 47 (the "Motion"). On August 3, 2022, Judge Denney issued a Report and Recommendation Granting in Part Plaintiff's Motion. *See* Dkt. No. 62. Defendants thereafter filed objections to Judge Denney's Report and Recommendation. *See* Dkt. No. 63. On March

29, 2023, Judge Traum issued an Order Overruling Defendants’ Objections to Magistrate Judge Denney’s Report and Recommendation. *See* Dkt. No. 80. In that order, the Court directed the parties to “meet and confer regarding the specifics of Sherman’s access to the sweat lodge.” *See id.* at 17. The parties have since engaged in negotiations relating to the scope of Plaintiff’s preliminary injunctive relief and sweat lodge access. *See, e.g.*, Dkt. Nos. 81, 87, 90, 92, 96, 99. On March 28, 2023, Defendants filed a Notice of Appeal of the Court’s March 29, 2023 order. *See* Dkt. No. 84. Following the filing of Defendants’ notice of appeal, the Ninth Circuit ordered the parties to participate in a mediation conference with the Circuit Mediator and thereafter stayed the briefing schedule by ninety days. *See Sherman v. Wickham, et al.*, Ninth Circuit Case No. 23-15665, Dkt. Nos. 5, 9, 11. The Parties have since participated in five mediation conferences. *See id.*, Dkt. Nos. 9, 12-13, 15, 17. The Circuit Mediator has scheduled a further mediation conference for October 11, 2023. *See id.*, Dkt. No. 19. In light of the parties’ ongoing settlement negotiations, the Ninth Circuit recently stayed the appellate briefing schedule for an additional 90 days. *See id.*, Dkt. No. 18. In the interest of conserving the Court’s and the parties’ resources, and in order to permit the parties to continue ongoing negotiations pursuant to the Court’s March 29, 2023 order and mediation discussions with the Circuit Mediator, counsel for the parties jointly request to continue the stay of the current case management dates granted by the Court on June 27, 2023. *See* Dkt. No. 95.

Counsel for the parties have met and conferred regarding this Stipulation and proposed stay, and no party objects to the requested stay. This Stipulation is being made in good faith and not for the purpose of delay.

DISCOVERY COMPLETED TO DATE

Plaintiff and Defendants have exchanged their mandatory initial disclosures. Prior to the filing of the First Amended Complaint, Plaintiff propounded written discovery on Defendant Harold Wickham, and Defendant Wickham timely responded to such written discovery requests. On April 4, 2023, Plaintiff propounded requests for production and interrogatories on Defendants

Wickham, Cooke, Drummond, Gittere, Reubart, Thomas, and Williams. As of the date of this filing, Defendants have not yet responded to those written discovery requests.

DISCOVERY YET TO BE COMPLETED

Plaintiff is awaiting Defendants' responses to the April 4, 2023 requests for production and interrogatories. After receiving Defendants' responses, Plaintiff intends to propound additional written discovery. After written discovery has been propounded and responded to, Plaintiff intends to notice depositions consistent with the Federal Rules of Civil Procedure and the Local Rules. Similarly, Defendants intend to serve written discovery and notice a deposition of the Plaintiff according to applicable rules. The parties will meet and confer regarding expert discovery and will submit an appropriate stipulation, consistent with the Local Rules, for the Court's consideration if expert discovery is anticipated.

REASONS FOR REQUESTED CONTINUANCE OF STAY

The parties request to continue the stay of the current case management deadlines so that they can continue their ongoing negotiations regarding the specifics of Plaintiff's sweat-lodge access pursuant to the Court's March 29, 2023 order. Additionally, a continuance of the stay of the case management deadlines would allow the parties to continue ongoing mediation efforts with the Circuit Mediator, including exploring a potential global settlement of Plaintiff's claims.

PROPOSED TIMELINE

Through this Stipulation, the parties hereby respectfully request that the Court enter an order continuing the stay of the currently imposed case management deadlines set in the Order. The parties further stipulate that, no later than ninety days from September 25, 2023, they will submit a joint notice, further stipulation, or proposed order relating to the case management schedule for the Court's review and approval.

Therefore, **IT IS HEREBY STIPULATED AND AGREED** between the parties, through their counsel, and subject to the Court's approval, that the Court's Order is stayed until this Court enters a new scheduling order.

Respectfully submitted,

Dated: September 25, 2023

O'MELVENY & MYERS LLP

By: /s/ Meaghan VerGow

Meaghan VerGow

Attorneys for Plaintiff Donald Sherman

Dated: September 25, 2023

LAW OFFICES OF KRISTINA
WILDEVELD & ASSOCIATES

By: /s/ Lisa A. Rasmussen

Lisa A. Rasmussen

Attorney for Plaintiff Donald Sherman

Dated: September 25, 2023

OFFICE OF THE NEVADA ATTORNEY
GENERAL

By: /s/ Chris W. Davis

Chris W. Davis

Attorney for Defendants Harold Wickham et al.

IT IS SO ORDERED.

Dated this 26th day of September, 2023.



Honorable Craig S. Denney
United States Magistrate Judge

STIPULATION TO CONTINUE STAY OF
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PLAN